

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**



76-7498

76-8317

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

ALVIN TROTMAN and FRANKLIN MITCHELL,

Plaintiffs-Appellees,

-against-

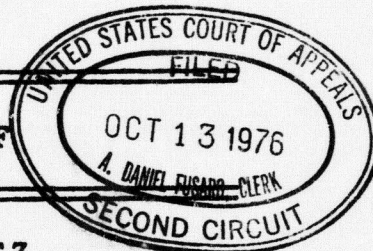
THE PALISADES INTERSTATE PARK COMMISSION,  
MORGAN CLARK, JOHN DOE OFFICERS OF THE  
PALISADES INTERSTATE PARK COMMISSION 1-3,

Defendants,

PALISADES INTERSTATE PARK COMMISSION,

Defendant-Appellant.

APPENDIX TO APPELLANTS' BRIEF



LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Defendant-  
Appellant  
The Capitol  
Albany, New York 10013

JAMES S. CARROLL, III, ESQ.  
Attorney for Plaintiff-  
Appellees  
70 Lafayette Street  
New York, New York 10013

PAGINATION AS IN ORIGINAL COPY

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SUMMONS IN A CIVIL ACTION

JUDGE KNAPP

CIV. 1a (5-64)  
(Formerly D. C. Form No. 1a Rev. (5-4-59))

United States District Court CN 4873

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. \_\_\_\_\_

ALVIN TROTMAN  
FRANKLIN MITCHELL

Plaintiff

SUMMONS

PALISADES INTERSTATE  
PARK COMMISSION; MORGAN  
CLARK; JOHN DOE OFFICERS  
OF THE PALISADES INTERSTATE  
PARK COMMISSION 1-3

Defendant

To the above named Defendant :

You are hereby summoned and required to serve upon

James S. Carroll

plaintiff's attorney, whose address

YORK, N.Y. 126 W. 119 St., New

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Raymond F. Bursaw  
Clerk of Court.

B. Wasserman  
Deputy Clerk.

Date:

Sept 5, 1977

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

COMPLAINT

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

75 CIV. 4377

-----X  
ALVIN TROTMAN,  
FRANKLIN MITCHELL,

Plaintiffs.

-against-

THE PALISADES INTERSTATE PARK  
COMMISSION; MORGAN CLARK; JOHN  
DOE OFFICERS OF THE PALISADES  
INTERSTATE PARK COMMISSION 1-3,

Defendants.  
-----X

: JUDGE KNAPP  
: C. J. A. V. H.

: Index No. \_\_\_\_\_

PRELIMINARY STATEMENT

1. This is an action brought pursuant to Title 42 U.S.C. sections 1983 and 1988 to redress the deprivation by color of state law of the rights of the plaintiffs, ALVIN TROTMAN and FRANKLIN MITCHELL, secured to the plaintiffs by the Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States. There are also pendent state claims against defendants stated as causes of action herein.

BEST COPY AVAILABLE

## COMPLAINT

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### JURISDICTION

2. Jurisdiction of this action is based upon Title 28, U.S.C., Sections 1331 and 1343 and upon the Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States. The amount in controversy exceeds \$10,000.00 exclusive of interests and costs. The Court also has pendent jurisdiction over claims under New York law.

3. The plaintiff has complied with all the conditions precedent to the bringing of this action and has complied with all of the provisions of the General Municipal Law of the State of New York, the Court of Claims Act of the State of New York and all other statutes relating to lawsuit against a subdivision of New York State.

### PARTIES

4. Plaintiffs, ALVIN TROTMAN and FRANKLIN MITCHELL are citizens of the United States and residents of the State of New York.

## COMPLAINT

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5. Defendant PALISADES INTERSTATE PARK COMMISSION POLICE on information and belief is a political subdivision of the State of New York. Defendant MORGAN CLARK is a police officer who is employed, on information and belief, by the Palisades Interstate Park Commission Police. Defendants JOHN DOE OFFICERS OF THE PALISADES INTERSTATE PARK COMMISSION are, on information and belief, officers who were involved in the acts towards plaintiff on June 15, 1974 which are alleged herein to have been unconstitutional.

### FACTS

6. On June 15, 1974, plaintiff, FRANKLIN MITCHELL, was driving his automobile with plaintiff, ALVIN TROTMAN as an occupant. Without cause or justification, plaintiff's automobile was halted by the individual defendants and plaintiff MITCHELL's automobile was searched.

7. During the search, plaintiffs were told to remain outside of the automobile while one of the JOHN DOE police officers had his weapon drawn and pointed at the plaintiffs although plaintiffs were both unarmed.

## COMPLAINT

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8. The individual defendants at the end of the search accused plaintiffs of possessing a quantity of marijuana in the automobile. Regardless of this asserted fact, however, the defendants did not arrest plaintiffs but instead defamed plaintiffs' name and livelihood by falsely accusing plaintiffs of possessing an illegal and controlled substance under Article 220 of the New York Penal Law.

9. Defendants further defamed plaintiffs by reporting that plaintiffs had possessed such controlled substances by reporting such false information to plaintiffs' employer relating to suspension from work, embarrassment, humiliation and loss of wages.

### FIRST CAUSE OF ACTION

10. Plaintiffs reallege as if fully set forth herein all of the preceding allegations of the complaint.

11. The said actions of the individual defendants were done under color of state law and during the course of employment and the said actions violated the plaintiffs' rights under the Fourth and Fourteenth Amendments of the Constitution.

COMPLAINT

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SECOND CAUSE OF ACTION

12. Plaintiffs reallege as if fully set forth herein all of the preceding allegations of the complaint.

13. The said actions of the individual defendants were done under color of state law and during the course of employment and the said actions violated the plaintiffs' rights under the Fifth and Fourteenth Amendments of the Constitution.

THIRD CAUSE OF ACTION

14. Plaintiffs reallege as if fully set forth herein all of the preceding allegations of the complaint.

15. The said actions of the individual defendants were done under color of state law and during the course of employment and the said actions violated the plaintiffs' rights under the Eighth and Fourteenth Amendments of the Constitution.

FOURTH CAUSE OF ACTION

16. Plaintiffs reallege as if fully set forth herein

COMPLAINT

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all of the preceding allegations of the complaint.

17. The said actions of the individual defendants were done under color of state law and during the course of employment and the said actions violated the plaintiffs' rights under the Fourteenth Amendment Equal Protection Clause of the Constitution.

FIFTH CAUSE OF ACTION AS A PENDENT CLAIM

18. Plaintiffs reallege as if fully set forth herein all of the preceding allegations of the complaint.

19. The said actions of the defendants were done during the course of employment of the individual defendants and were done in a malicious and intentional manner to cause plaintiffs to lose their employment or to seriously interfere with their employment. PALISADES INTERSTATE PARK COMMISSION is liable under the doctrine of Respondeat Superiore.

COMPLAINT

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SIXTH CAUSE OF ACTION

20. Plaintiffs reallege as if fully set forth herein all of the preceding allegations of the complaint.

21. The said actions of the plaintiffs were done during the course of employment of the individual defendants and were defamatory per se. PALISADES INTERSTATE PARK COMMISSION is liable under the doctrine of Respondeat Superiore.

RELIEF

22. As a result of the defendants' actions, plaintiffs have suffered loss of earnings, pain, humiliation, suffering and distress.

WHEREFORE, plaintiffs respectfully request the Court to:

a) Accept jurisdiction in this case;

b) Grant judgment in favor of the plaintiffs in the amount of \$150,000.00 as compensatory damages and \$450,000.00

COMPLAINT

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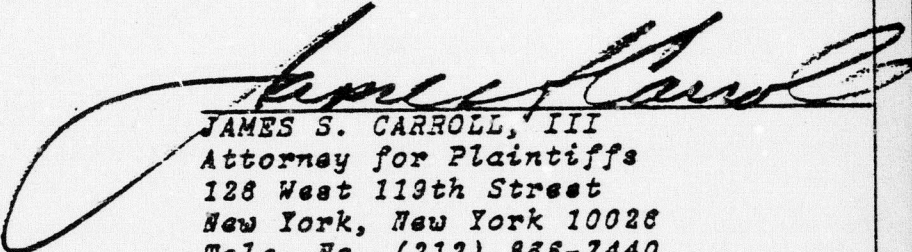
as punitive damages;

c) Grant such other and further relief as the ends of justice demand.

DATED:

9/3 , 1975.

Respectfully Submitted,



JAMES S. CARROLL, III  
Attorney for Plaintiffs  
128 West 119th Street  
New York, New York 10028  
Tele. No. (212) 866-7440

NOTICE OF MOTION

10

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ALVIN TROTMAN,  
FRANKLIN MITCHELL,

Plaintiffs,

-against-

THE PALISADES INTERSTATE PARK COMMIS-  
SION; MORGAN CLARK; JOHN DOE OFFICERS  
OF THE PALISADES INTERSTATE PARK  
COMMISSION 1-3,

Defendants.

:  
:  
:  
:  
: NOTICE OF MOTION

: 75 CIV. 4377 WK  
:  
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:  
:-----X

S I R S :

PLEASE TAKE NOTICE that the undersigned will move this Court, at a term thereof for the hearing of motions, to be held before the Honorable Whitman Knapp on the 21st day of November, 1975, at 2 o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, for an order pursuant to Rule 12(b)(1), Fed. R. Civ. P., dismissing the complaint herein for lack of jurisdiction, and for such other, further and different relief that, as to this Court, appears just and proper.

Dated: New York, New York  
November 7, 1975

Yours, etc.,

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Defendant  
Palisades Interstate  
Park Commission  
Office & P. O. Address  
Two World Trade Center  
New York, New York 10047  
Tel. No. (212) 488-4594

TO: JAMES S. CARROLL, III, ESQ.  
Attorney for Plaintiffs  
126 West 119th Street  
New York, NY 10026

AFFIDAVIT OF SEYMOUR MARTINSON IN SUPPORT OF MOTION

11

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ALVIN TROTMAN,  
FRANKLIN MITCHELL,

Plaintiffs,

- against -

THE PALISADES INTERSTATE PARK  
COMMISSION; MORGAN CLARK; JOHN  
DOE OFFICERS OF THE PALISADES  
INTERSTATE PARK COMMISSION 1-3,

Defendants.

AFFIDAVIT

75 CIV. 4377

STATE OF NEW YORK     )  
                              ) ss.:  
COUNTY OF ALBANY     )

SEYMOUR MARTINSON, being duly sworn, deposes and says:

1. That deponent is, and has been since 1962, Assistant Attorney General assigned to the Claims and Litigation Bureau, Albany, New York, and has tried claims involving the Palisades Interstate Park Commission, including those sounding in tort.

2. The claims against Palisades Interstate Park Commission, including those involving alleged torts by police in New York, have always been tried in the Court of Claims, because they are considered torts involving acts within the State of New York. Palisades Interstate Park Commission is but an arm of the State of New York in this respect. This

## AFFIDAVIT OF SEYMOUR MARTINSON IN SUPPORT OF MOTION

has been uniformly the rule in connection with torts of all kinds and nature involving employees of the Palisades Interstate Park Commission within the State of New York, including the police, who are in fact the equivalent of State Police with primary jurisdiction in the 8th Park Region as discussed in Mr. Stewart's affidavit. Hence, from personal involvement and observation of trials growing out of acts of New York personnel of the Palisades Interstate Park Commission, and from investigation of the history of past claims, it may be stated as a fact that the jurisprudence, as well as the executive and legislative policy, has consistently held the Palisades Interstate Park Commission to be but an arm of New York State.

3. Attention may be called to the case of Onteora, 298 Federal Rep. 553 (1923), which was a case decided by then District Judge Learned Hand, for the doctrine that Palisades Interstate Park Commission, in connection with claimed torts, is a state agency. See Dietrich v. Palisades Interstate Park Commission, 114 Misc. 425, 427, 428. In Conklin v. Palisades Interstate Park Commission, 282 App. Div. 728 (1953), the Second Department of the Appellate Division of the State of New York stated:

"The County Court had no jurisdiction of the claim of the plaintiffs against Palisades Interstate Park Commission, which is an instrumentality of the State and not subject to a claim of this nature in any court of the State save the Court of

"Claims. (L. 1937, ch. 170; Court of Claims Act §§ 8-12; cf. Pauchogue Land Corp. v. State Park Comm., 243 N.Y. 15; The Onteora, 298 F. 553, and Niagara Falls Power Co., v. White, 292 N.Y. 472) \* \* \* The State has assumed liability for damages of this character on the express condition that the claimant complies with the limitations of the Court of Claims Act."

4. It may be inferred that the plaintiffs have misconceived Palisades Interstate Park Commission for a municipality such as the City of New York. In this connection, Judge Learned Hand said in The Onteora, supra, at pp. 554, 555, that the Commission is a "body politic" but not a municipality. This has been consistently the law and practical construction of the law ever since that time and to date in the State of New York.

5. It is notable that in 1970, a Marie Kortlang, a resident and citizen of the State of New Jersey, incurred alleged personal injuries at Bear Mountain, New York, and brought suit in the Superior Court of New Jersey against the Palisades Interstate Park Commission, duly serving one of the Palisades Interstate Park Commission New Jersey employees in the State of New Jersey. Deponent was assigned to this case since it was by virtue of injuries sustained in the State of New York. The Honorable George F. Kugler, Jr., Attorney General of New Jersey, appeared for the Commission in that state on a motion to dismiss by virtue of the fact that the case should be transferred to the Court of Claims in the

AFFIDAVIT OF SEYMOUR MARTINSON IN SUPPORT OF MOTION

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State of New York as a claim against an arm of the State of New York, copy of the order of the Superior Court of the State of New Jersey, Law Division, Bergen County, dismissing the complaint is attached hereto. Deponent argued this motion together with then Deputy Attorney General Sherman T. Brewer, Jr., as affirmatively appears.

6. Before the bar in the present case, although plaintiffs allege they are citizens of the State of New York, and all of the alleged acts occurred in the State of New York by employees, to wit: the police of the Palisades Interstate Park Commission in the State of New York, it is a claim against the State. Under the Eleventh Amendment, the State of New York is immune from Federal jurisdiction in this instance. The interpretation of the statutes, as well as the practical construction given to them by the Executive and Judicial Departments in the State of New York, are entitled to the highest rank and weight.

s/ Seymour Martinson  
SEYMOUR MARTINSON

Sworn to before me this

5th day of November, 1975.

s/ Adela Podgorski  
Notary Public

Residing in Schenectady Co.  
Commission expires 3/30/76

GEORGE F. KUGLER, JR.  
Attorney General of New Jersey  
Attorney for Defendant  
Palisades Interstate Park  
State House Annex  
Trenton, New Jersey 08625

By: Sherman T. Brewer, Jr.  
Deputy Attorney General  
(609) 292-4737

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - BERGEN COUNTY  
DOCKET NO. L 22813-70

MARIE KORTLANG, )  
Plaintiff, )  
vs. )  
PALISADES INTERSTATE PARK, )  
Defendant. )

Civil Action

ORDER DISMISSING COMPLAINT

This matter having been opened to the Court upon the motion to dismiss the complaint brought on behalf of the Palisades Interstate Park Commission (sued herein as Palisades Interstate Park) by George F. Kugler, Jr., Attorney General of New Jersey, Sherman T. Brewer, Jr., Deputy Attorney General, appearing, and

Louis J. Lefkowitz, Attorney General of New York, having been granted permission to appear in support of the motion, Seymour Martinson, Assistant Attorney General, appearing, and in the presence of Joseph B. Gordon, Esq., attorney for plaintiff, appearing in opposition to the motion, and the Court having considered the briefs submitted by the respective parties, and having heard and considered the oral argument of the respective attorneys appearing, and being of the opinion that the motion to dismiss the complaint should be granted,

IT IS on this 16 day of September, 1971,

ORDERED, that the complaint of plaintiff, Marie Kortlang, be and the same is hereby dismissed; and it is further

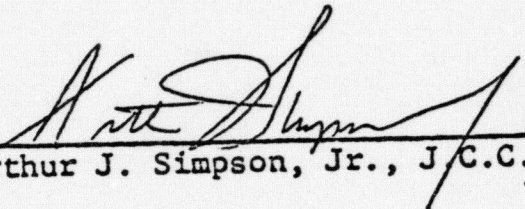
ORDERED that the plaintiff take forthwith any and all necessary steps to obtain permission to file a claim in the Court of Claims of the State of New York and to file such claim and pursue the remedies open to plaintiff in the State of New York to enforce a tort claim against the Palisades Interstate Park Commission as an arm of the State of New York, and it is further

ORDERED that if, but only if, the plaintiff is unable to obtain approval from the State of New York to maintain her claim against the Palisades Interstate Park Commission in the New York State Court of Claims, the plaintiff shall have leave to

obtain a reopening of the present order and determination dis-  
missing the complaint.

Discovery is limited to  
\_\_\_\_\_ days

\_\_\_\_\_ days  
\_\_\_\_\_ within  
to be served on adversary's  
A copy of this order

  
Arthur J. Simpson, Jr., J/C.C. T/A

A copy of this order.

to be served on adversary's

attorney within \_\_\_\_\_ days

AFFIDAVIT OF DONALD B. STEWART IN SUPPORT OF MOTION

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ALVIN TROTMAN,  
FRANKLIN MITCHELL,

Plaintiffs,

- against -

THE PALISADES INTERSTATE PARK  
COMMISSION; MORGAN CLARK; JOHN  
DOE OFFICERS OF THE PALISADES  
INTERSTATE PARK COMMISSION 1-3,

Defendants.

AFFIDAVIT

75 CIV. 4377

STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF ROCKLAND )

DONALD B. STEWART, being duly sworn, deposes and  
says:

1. I am the Assistant General Manager of Palisades  
Interstate Park Commission and have my office at Bear Mountain  
State Park in Rockland County, New York.

2. All claims arising from incidents occurring on  
park lands located in New York State in the past have been  
compensated, if at all, by appropriations and disbursement  
in and by the State of New York, and are claims against New  
York State, and paid out of the general funds of the State  
of New York.

3. Tort claims arising on park lands located in  
the State of New York have always been referred to the Attor-  
ney General's office of New York State in Albany, New York,

and have been litigated in the New York State Court of Claims pursuant to the Court of Claims Act of the State of New York.

4. The above statements are made by deponent on knowledge, deponent having been with Palisades Interstate Park Commission since 1966 in various positions including Superintendent of the System within the State of New York and now is Assistant General Manager.

5. All of the acts that are alleged by plaintiffs in this case are alleged to have been committed in New York State by the police of Palisades Interstate Park Commission. In this connection, the compact itself states in Article VII:

"1. Neither the state of New York nor the state of New Jersey shall be liable for any torts of the commission, its members, officers or employees, except as provided by the laws of such state, but each member, officer and employee of the commission shall with respect to any tort committed by him in the exercise of his duties or in the course of his employment as such member, officer or employee, be deemed to be an officer or employee of the state where such tort was committed, and any liability arising from such tort shall be governed by the laws of such state."

6. The Palisades Interstate Park Commission police are assigned to the 8th Region as defined by the New York State Legislature in Article 7 of the Parks and Recreation Law of the State of New York (which was enacted as a new Chapter 36-B of the Consolidated Laws by L. 1972, c.660, §1, effective September 1, 1972, as amended) under Section 7.01, Park Regions, it is provided:

"The state shall be divided into twelve park regions as follows:

\* \* \*

"8. The eighth region shall consist of the counties of Orange and Rockland and those portions of the counties of Sullivan and Ulster lying outside the Catskill park."

This region constitutes all of the lands in the State of New York under the jurisdiction of the Palisades Interstate Park Commission.

7. The Legislature of New York has also provided in Section 9.09 dealing with employees of Palisades Interstate Park Commission under subdivision 3 as follows:

"Employees of the commission whose salary is paid in full from funds appropriated by the state shall be deemed to be employees of the state in the classified civil service of the state under the provisions of the civil service law. Commission employees not deemed to be state employees hereunder shall be employees of the commission."

The police are employed pursuant to Section 9.05, subdivision 4, which empowers the Palisades Interstate Park Commission to:

"Appoint such employees, including members of the regional state park police for the eighth region, as may be necessary to carry out its powers, functions and duties."

8. The State Park Police are paid in full from funds appropriated by the State of New York and are under the classified civil service of the State, and by virtue of the above quoted Article VII of the compact, any alleged tort committed by them is equivalent to an alleged tort against the State of New York.

9. The deponent wishes further to call attention to the fact that at all times, and even prior to the enactment of the Parks and Recreation Law, the alleged torts and claims arising therefrom of employees of the Commission within the State of New York have been treated as claims against the State itself, defended by the Attorney General of the State of New York, pursued in the Court of Claims, and paid out of the general funds of the State of New York.

s/ Donald B. Stewart

---

DONALD B. STEWART

Sworn to before me this

31 day of October 1975

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Notary Public

JAMES G. TAYLOR  
Notary Public, State of New York  
Residing in Orange County  
Commission Expires March 30, 1977

AFFIDAVIT IN OPPOSITION

22

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X  
ALVIN TROTMAN,  
FRANKLIN MITCHELL,

Plaintiffs.

-against-

THE PALISADES INTERSTATE PARK COMMISSION;  
MORGAN CLARK; JOHN DOE OFFICERS OF THE  
PALISADES INTERSTATE PARK COMMISSION 1-3,

Defendants.  
-----X

STATE OF NEW YORK )  
                              ) ss.:  
COUNTY OF NEW YORK )

AFFIDAVIT IN OPPOSITION

75 Civ. 4377

JAMES S. CARROLL, III, being first duly sworn, deposes and says that:

1. I am the attorney for the plaintiffs herein and I make this affidavit in opposition to the defendant PALISADES INTERSTATE PARK COMMISSION's motion to dismiss the complaint pursuant to F.R.C.P., Rule 12(b)(7)

2. Defendant's contention is that the Palisades Interstate Park Commission is an arm of the State of New York and as such is immune from suit under the Eleventh Amendment of the Constitution.

3. This is an action brought pursuant to Section 1903 and 1988 of Title 42 U.S.C. The allegations in the Complaint are that on or about June 15, 1974, plaintiffs were driving their automobile and that they were stopped by officers employed by the Palisades Interstate Park Commission. The officers possessed neither a search or arrest warrant and did not have probable cause to search or arrest the plaintiffs.

The plaintiffs' automobile was searched and plaintiffs were forced to stand outside of their automobile at gunpoint. A false report was thereafter made to the effect of the plaintiffs resulting in suspension from work, loss of pay, embarrassment and humiliation. The actions of the officers were done under color of State Law and during the course of employment of the officers. The actions of the officers are alleged to have violated the plaintiffs' rights under the Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution. Palisades Interstate Park Commission is being sued under the doctrine of Respondeat Superieure under the Fifth and Sixth Causes of Action of the Complaint which are state causes of action.

4. The defendants have misconstrued the thrust of the cases cited and the Eleventh Amendment of the Constitution. The Eleventh Amendment provides that:

"The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State or by Citizens or Subjects of any foreign state."

The Eleventh Amendment is not a constitutional embodiment of the doctrine of sovereign immunity. By its terms, it means that in Diversity of Jurisdiction cases, the Judicial Power of the United States does not extend. The instant lawsuit, however, is not grounded on diversity of citizenship but on 42 U.S.C., Sections 1983 and 1988 and on 28 U.S.C., Sections 1331 and 1343. Therefore, this suit is not barred by the Eleventh Amendment and cases interpreting that amendment. For egs. O'Neill v. Early, 208 F. 2d 286 (Fourth Circ. 1953). This case stands for the proposition that the 11th Amendment was a bar in a former teachers' suit against a school board for money damages for breach of K.

AFFIDAVIT IN OPPOSITION

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1953).

As the court stated in Fabrizio Martin Inc. v. Board of Education Central School District Number 2 (S.D.N.Y. 1968):

"Once we find that the defendant is not the State of New York, we must find that it is a New York corporation and there being diversity of citizenship, there is no ground for urging that it may not be sued in Federal Court."

Similarly, in this case, the defendants do not deny that there is jurisdiction under The Civil Rights Statutes and under 28 U.S.C. 1331 and 1343. They assert that under the Eleventh Amendment, the Palisades Interstate Park Commission cannot be sued, a contention that is clearly erroneous. Therefore, the Motion must be denied.

2. 5. A further contention raised by the defendants is that they can be sued only in the Court of Claims of the State of New York. Breen v. Mortgage Commission of the State of New York, 285 N.Y. 425 (1941). The plaintiffs have complied with the provisions of the Court of Claims Act. The plaintiffs, however, have chosen to bring the Action in Federal District Court rather than in the Court of Claims. In Section 8 of the Court of Claims Act, the State waives its immunity from lawsuit and consents to be sued. The State cannot on one hand consent to be sued and on the other hand attempt to limit the jurisdiction of the Federal Courts.

6. In Scheuer v. Rhodes, 416 U.S. 232 (1974) the Court considered the issue of the immunity of officers of the State from suit and the effect of the Eleventh Amendment on suits brought under Title 42 U.S.C., Section 1983.

Suit was specifically directed against the Gov., the Adj Gen, and other named As. The thrust of Mr Justice Berger's decision was that they

Possibly could be held personally  
liable. Immunity is qualified not  
absolute

AFFIDAVIT IN OPPOSITION

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The Court stated that the Eleventh Amendment does not provide a shield for a state official confronted by a claim that he violated the Civil Rights of another and that the doctrine of executive immunity depends upon the extent of the discretion and responsibilities of the particular office. Since Monroe v. Pape, 365 U.S. 167 (1961), police officers have not been able to raise executive immunity as a defense to liability for a violation of an individual's civil rights.

WHEREFORE, your deponent requests that the Court deny the defendant's motion in all respects and grant such other and further relief as the ends of justice demand.

---

JAMES S. CARROLL, III

Sworn to before me this

15th day of January, 1976.

---

NOTARY PUBLIC

MEMORANDUM AND ORDER

26

DEPARTMENT OF LAW  
CLAIMS BUREAU  
MAR 15 1976

NEW YORK DISTRICT

By

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ALVIN TROTMAN and FRANKLIN MITCHELL.

Plaintiffs.

- against -

PALISADES INTERSTATE PARK COMMISSION:  
MORGAN CLARK; JOHN DOE OFFICERS OF THE  
PALISADES INTERSTATE PARK COMMISSION  
1-3,

Defendants.

MEMORANDUM AND ORDER

75 CIV 4377

443985

SNAPP, P.J.

This is a civil rights action under Sections 1981 and 1983 of Title 42 U.S.C. Plaintiffs Alvin Trotman and Franklin Mitchell seek compensatory and punitive relief from defendants, the Palisades Interstate Park Commission (hereinafter "the Commission") and three officers of the Commission police, for alleged false arrest, imprisonment and defamation. In the motion now before us, the Commission asserts that it is entitled to immunity from suit under the Eleventh Amendment as an agency of the State of New York, and moves for dismissal of the complaint against it pursuant to Federal Rule 12(b)(1).

MICROFILM

MAR 15 1976

MEMORANDUM AND ORDER

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This court has recently addressed the question of sovereign immunity in the case of Byram River v. Village of Port Chester (1975) 394 F.Supp. 518, where we held that the Interstate Sanitation Commission was not entitled to the protection of the Eleventh Amendment. In Byram River we applied the criteria set forth by Judge Moore in Whitten v. State University Construction Fund (2d Cir. 1974) 493 F.2d 177 to determine whether the state was the real party in interest and hence not subject to suit in federal court. The factors relevant to this determination are: "ability to sue and be sued, lack of express authority to sue, performance by the entity of an 'essential governmental function', power to take property in the name of the State, power to take property in its own name, corporate status, lack of corporate status, financial interest of one State and absence of State financial interest." Of these factors, the most critical is ultimate State liability. 493 F.2d at 179-180.

We found in Byram River that, although the Interstate Sanitation Commission lacked the power to take property in its own name, it had the authority to sue and be sued, that it engaged in a governmental function, and, most crucially, that it could not pledge the credit of any of the compacting states. Our consideration of these factors led us to conclude that the Interstate Sanitation Commission was not protected by sovereign immunity.

MEMORANDUM AND ORDER

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The basic powers, functions and duties of the Palisades Interstate Park Commission are conferred by the compact between New York and New Jersey authorized by Congress which establishes the Commission, Public Resolution #65, 75th Congress, August 19, 1937, 50 Stat. 219 (1937). Supplementary legislation in New York is Article 9 of the Parks and Recreation Law (McKinney, 1975). Article II of the Compact provides that the Commission is a "corporate municipal instrumentality" performing governmental functions of the two states with "the power to sue and be sued." Article 9 of the Parks and Recreation Law specifies that title to any property acquired by the Commission "shall be taken in the name of the Commission." 59.07 All of these factors weigh against a finding of sovereign immunity. Further, the most critical factor, which placed the Interstate Sanitation Commission in Byram River outside the ambit of Eleventh Amendment protection is equally present here. We found in Byram River that New York was "expressly not liable for the debts of the Commission" since the compact in that instance forbade the Sanitation Commission to pledge the credit of any of the three states involved without the authority of their respective legislatures. <sup>1/</sup> The sole provision of Article VI of the Palisades Interstate Park Commission Compact uses identical language: "[t]he commission shall not pledge the credit of either state except by and with the authority of the legislature thereof."

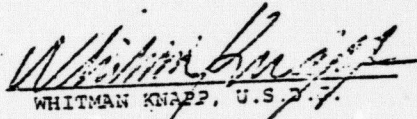
MEMORANDUM AND ORDER

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Accordingly we find that the Commission here is similarly not entitled to claim sovereign immunity under the Eleventh Amendment. Its motion is therefore denied.

SO ORDERED.

Dated: New York, New York  
March 1, 1976.

  
WHITMAN KNAPP, U.S.J.

MEMORANDUM AND ORDER

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FOOTNOTE

- 1/ "The commission shall not incur any obligations for salaries or office or other administrative expenses prior to the making of appropriations adequate to meet the same, nor shall the commission pledge the credit of any of the signatory states except by and with the authority of the legislature thereof." Public Resolution #62, 74th Congress, August 17, 1935, c. 779, 49 Stat. 932.

SUPPLEMENTAL MEMORANDUM AND ORDER

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

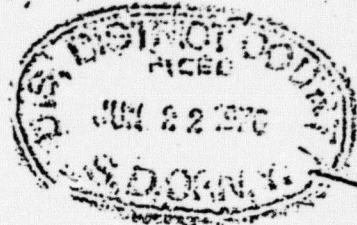
ALVIN TROTMAN and FRANKLIN  
MITCHELL,

Plaintiffs,

- against -

PALISADES INTERSTATE PARK  
COMMISSION: MORGAN CLARK: JOHN DOE  
OFFICERS OF THE PALISADES INTER-  
STATE PARK COMMISSION 1-3,

Defendants.



MEMORANDUM AND ORDER

75 Civ. 4377

4/4/619

KNAPP, D.J.

By letter dated May 11, 1976, defendant Palisades Interstate Park Commission requested that we certify pursuant to 28 U.S.C. §1292(b) our decision that the Commission is not entitled to Eleventh Amendment immunity in this court. Having waited a month in order to afford plaintiffs an opportunity to respond, and having received no communication from plaintiffs, we have concluded that our memorandum and order of March 1, 1976 is an appropriate one for immediate appellate review, since it involves a controlling question of law as to which there is a substantial ground for difference of opinion, and an immediate appeal from the order may materially advance the ultimate termination of the litigation.

There are, however, two factors which we believe

SUPPLEMENTAL MEMORANDUM AND ORDER

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should be brought to the attention of the Court of Appeals when it considers whether or not to concur in our certification. First, we have been unable to determine whether the other defendants have been served by the Marshal, there being no record of any service whatsoever in the Clerk's files; as a result, we cannot say that a reversal of our decision would necessarily dispose of the entire case.

Second, we question whether the defendant Commission is amenable to suit pursuant to 42 U.S.C. §1983 on the ground that it may not be a "person". Monell v. Dept. of Social Services of the City of New York, 2d Cir. slip op. 407, March 8, 1976. To be sure, it appears that the criteria used by the Court of Appeals to determine whether or not a governmental body is a "person" within the meaning of §1983 are similar enough to the criteria we used to determine whether or not such a body is accorded sovereign immunity so that a decision of one issue might well determine the other. Thus, the fact that we concluded that the defendant Commission is not entitled to sovereign immunity should necessarily mean that it is a person under §1983. However, we point out that the question has been neither raised nor briefed by the parties.

Accordingly, it is ORDERED that our decision of March 1, 1976 involves a controlling question of law as to which there is substantial ground for difference of opinion and an immediate appeal therefrom may materially advance the ultimate termination of the litigation.

Dated; New York, New York

June 16, 1976.

  
WHITMAN KNAPP, U.S.D.J.

-----X

ALVIN TROTMAN, FRANKLIN MITCHELL, :

Plaintiffs, : VERIFIED ANSWER

-against- : Index No.

THE PALISADES INTERSTATE PARK COMMISS- :  
SION; MORGAN CLARK; JOHN DOE OFFICERS :  
OF THE PALISADES INTERSTATE PARK :  
COMMISSION 1-3, :

Defendants. :

-----X

The defendant, The Palisades Interstate Park Commission, by LOUIS J. LEFKOWITZ; Attorney General of the State of New York, by WILLIAM T. McCUE, Assistant Attorney General, of Counsel, answering the complaint of the plaintiffs, herein alleges:

FIRST: Denies any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraphs of the complaint designated as "1", "4", "6", "7", "8", "9" and "22".

SECOND: Upon information and belief admits that The Palisades Interstate Park Commission is but an arm of The State of New York in this respect and that Morgan Clark is a police officer employed by Palisades Interstate Park Commission and except as admitted denies the allegations set forth in paragraph of the complaint designated as "5".

THIRD: Repeats and reiterates as if fully set forth herein all of the preceding answers to the complaint in paragraphs numbered "10", "12", "14", "16", "18" and "20".

FOURTH: Denies all of the allegations contained in paragraphs numbered "2", "3", "11", "13", "15", "17", "19" and "21" begging leave to permit all legal evaluations and determinations as to the defendant's conduct to be made by the court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO THE PLAINTIFFS COMPLAINT, DEFENDANT ALLEGES:

FIFTH: The court lacks jurisdiction over the subject matter of the plaintiffs' action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO THE PLAINTIFFS' COMPLAINT, DEFENDANT ALLEGES:

SIXTH: The plaintiffs' complaint does not state a claim against defendant herein upon which relief can be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO THE PLAINTIFFS' COMPLAINT, DEFENDANT ALLEGES:

SEVENTH: The right of action set forth in the complaint did not accrue within one year next before the commencement of this action.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO THE PLAINTIFFS' COMPLAINT, DEFENDANT ALLEGES:

EIGHTH: The court lacks jurisdiction in that the Commission is immune from suit under the Eleventh Amendment of

ANSWER

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the Constitution of the United States as an agency of the State of New York.

WHEREFORE, defendant respectfully demands judgment dismissing the plaintiffs' complaint herein with costs.

Dated: New York, New York  
June 30, 1976

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Defendant,  
The Palisades Interstate  
Park Commission  
By:

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WILLIAM T. MCCUE  
Assistant Attorney General

TO: JAMES S. CARROLL, III  
Attorney for Plaintiffs  
126 West 119th Street  
New York, NY 10026

ORDER GRANTING LEAVE TO APPEAL

76-8317  
C 13

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UNITED STATES COURT OF APPEALS

Second Circuit



At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the Twenty-first day of July, one thousand nine hundred and seventy-six.

Alvin Trotman & Franklin Mitchell,

Plaintiffs-Appellees,

v.

The Palisades Interstate Park Commission,  
Morgan Clark, John Doe Officers of the  
Palisades Interstate Park Commission 1-3,

Defendants

Palisades Interstate Park Commission,

Defendant-Appellant.

It is hereby ordered that the motion made herein by counsel for the

appellant

~~appellee~~

~~petitioner~~

~~respondent~~

~~by notice of motion dated~~ July 9, 1976 for leave to appeal pursuant  
to 28 USC §1292(b)

be and it hereby is granted

denied  
~~XXXXX~~

~~XXXXXX~~

STERRY R. WATERMAN

THOMAS J. MESKILL

JOHN R. BARTELS, U.S. Circuit Judges